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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 18th day of June, 1998

Before:

THE HON'BLE MR. JUSTICE R.V. RAVEENDRAN

Writ Petition No. 28307 of 1993

Mahatma Bomgondeshwar Education
Society, Bidar, by its President,
Sri B. Narayana Rao

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..Petitioner

(By Sri V. Narayana Swamy, Advocate)

-Vs-

1. The City Municipal Commissioner,
Bidar;

2. The Chairman,
Ashraya Scheme,
Bidar Taluk,
Bidar

..Respondents

(By Sri B.C. Muddappa, Adv., for R1 & R2)

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Writ Petition is filed praying to quash the order dated 31-7-1993 issued by the Municipal Commissioner, Bidar the 1st respondent vide Annexure-K.

This writ petition coming on for preliminary hearing in 'B' Group this day, the Court made the following:-

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O R D E R

Petitioner is a registered Society running several educational Institutions. It made an application for allotment of one acre of land in Sy.No.3 of Gullar Haveli, Bidar. The Assistant Executive Engineer of the City Municipal Council, Bidar, who examined the proposal, made a recommendation that as the said land was not available, half an acre of land in Sy.Nos.15 and 16 of Gullar Haveli may be allotted to the petitioner, vide Annexure-A. The Municipal Commissioner recommended that a proposal may be sent to the Director of Municipal Administration for approval and a resolution may be passed recommending the proposal. The Administrator approved such action and a public notice dated 27-2-1990 was published inviting objections to the said proposal within 30 days. However without waiting for the 30 days period to expire, the then Administrator of the first respondent passed a resolution No. 287 on 28-2-1990 (Annexure-D) for grant of the said land to the petitioner and referred the matter to the Government, for approval vide Annexure-E dated 5-3-1990.

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2. Subsequently, the Elected Municipal Council of the first respondent passed a resolution dated 30-8-1990 [Annexure-F] withdrawing the earlier resolution dated 28-2-1990, as the proposal was not in the interest of the Municipality. The first respondent informed the Government about the withdrawal of resolution, by its communication dated 23-3-1991. In spite of it, the State Government passed an order dated 27-8-1991 [Annexure-G]. granting previous sanction under Section 27(2) of Karnataka Municipalities Act, 1964 ('Act' for short) for grant of the said land to petitioner and cancelled the resolution of the first respondent dated 30-8-1990 by which the proposal was withdrawn. By subsequent Amendment orders dated 12-3-1993 and 31-5-1993 (Annexure-H and J), *the order dated 27-8-1991 has been amended* indicating the correct Sy. number and extent of the land. Petitioner contends that on 27-9-1992, the foundation stone for construction of petitioner's College was laid by the then Chief Minister in the presence of the President and Commissioner of the first respondent Municipal Council and that amounts to delivery of possession of the land to the petitioner.

RMR

3. The first respondent did not, however, grant the land to the petitioner in pursuance of the said Government Order dated 27-8-1991. On the other hand, it sent a communication dated 31-7-1993 [Annexure-K] to the petitioner stating that in view of Ashraya Scheme implementation no land was available in Sy.Nos.15 and 16 for grant. Feeling aggrieved, petitioner has filed this petition and sought quashing of Annexure-K and a direction to the respondents not to undertake any construction activities in the said land. Petitioner has also sought a direction to the first respondent to accept the cost of the land (Rs.100/- per square meter for 2,023.43 square meters in Sy.Nos.15 and 16 of Guller Haveli) as directed by the ~~Court~~ ^{Government} orders.

4. The first respondent Municipality has filed objections stating that the land is no longer available, as 85 sites were formed in Sy. No. 15 and 16 and distributed to the persons belonging to weaker sections of society in October 1992, under Ashraya Scheme as per proceedings dated 8-11-1991 and 13-1-1992 of the Task force Committee of

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Ashraya Scheme. The first respondent has produced the said proceedings as Annexure-R4 and R5 and the list of allottees as Annexure A6 and copies of some of the Hakku patras as Annexures-R7(1) to R-7(18).

4.1) It has also contended that the resolution passed by the Administrator on 28-2-1990 proposing to allot the said land was contrary to Rule 39 of the Karnataka Municipalities (Guidance of Officers, Grant of Copies and Miscellaneous Provisions) Rules, 1966 which is extracted below:-

"Procedure in respect of lease, sale or auction:- Save as otherwise provided in the Act or rules, when the municipal council proposes to lease, sell or auction any moveable or immoveable property, it shall give notice of such lease, sale or auction by:-

(i) affixing copies thereof on the notice board of the offices of the municipal council;

(ii) exhibiting copies thereof in all municipal reading rooms and places considered by the municipal council to be conspicuous within the municipality;

(iii) publication in a daily newspaper having wide circulation within the municipality;

(iv) by beat of drum or circulation of notice in the locality."

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The first respondent has contended that there was no notice by any of the four modes that are mentioned in Rule 39 and the Administrator had passed the resolution in a great hurry even without waiting for the expiry of 30 days period provided for filing objection, as per the public notice dated 27-2-1990 published in the local news paper dated 3-3-1990.

4.2) The respondents rely on the decision of this Court in CITY MUNICIPAL COUNCIL v. STATE OF MYSORE, 1974(2) Kar.L.J. 390 wherein it is held that the Government is not the competent authority to grant or dispose of municipal land. It is held that the Government can only grant prior approval for grant or otherwise, to dispose of the municipal property and mere sanction of the Government under Section 72(2) does not confer any right on a proposed grantee unless it is followed by appropriate resolution granting the Land. It is also held that even after the grant of prior sanction by the Government, the Municipal Council may or may not grant the land. The first respondent, therefore, contend that the petitioner has no right to claim grant of the said land

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belonging to the first respondent and the Government order relied on by the petitioner is not by itself a grant.

5. In this case, the proposal was put up by the Assistant Executive Engineer and the Municipal Commissioner on 12-2-1990. The public notice inviting objections was issued on 27-2-1990 and published in a local newspaper on 3-3-1990. But strangely the Administrator passed a resolution on 28-2-1990 itself proposing the sanction of the said land and sent a communication to the State Government seeking its prior sanction. Thus the proposal itself was not valid, as being opposed to Rule 39 extracted above. Further the said proposal stood withdrawn on 30-8-1990 long prior to the grant of sanction by the Government. Therefore, as on 27-8-1991 when the Government passed the order giving previous sanction, there was actually no valid or existing proposal for grant of land to the petitioner and therefore the question of Government giving prior sanction to ^anon-existent proposal does not arise. As held by this Court in the decision referred to above, the State Government's function is only to grant previous sanction or refuse it,

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but not^{to} cancel any resolution of the Municipal Council withdrawing an earlier proposal ^{not to} ~~or~~ direct grant of land to anyone. In the circumstances, the mere issue of the order dated 27-8-1991 giving previous sanction for allotment of the land to the petitioner, does not confer any right on the petitioner, as the same is not followed by a resolution granting the land to the petitioner.

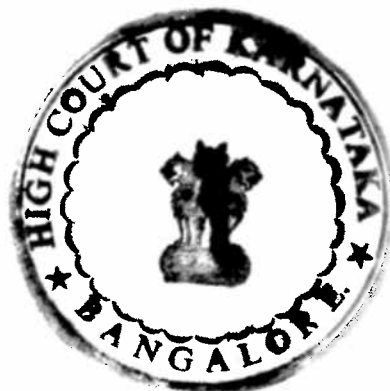
6. The next question that arises for consideration is whether there is any arbitrariness or unreasonableness in the action of the first respondent in withdrawing the earlier resolution dated 28-2-1990. The procedure followed by the Administrator shows that he has clearly violated Rule 39 which is extracted above. Having invited the objections by issue of public notice dated 27-2-1990 (published on 3-3-1990) the Administrator proceeded to pass a resolution on 28-2-1990, the very next day, even without waiting for the objections., In view of the serious irregularity in the manner in which the proposal was proposed and processed, the Elected body was justified in cancelling the earlier resolution No.287 dated 28-2-1990.

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7. A resolution by the Municipality proposing grant, by itself does not create any right, as it is continues to be a mere proposal, until a resolution is passed by the Municipality granting the site, after obtaining the prior sanction of the Government. Hence, the resolution dated 28-2-1990 did not cease any enforceable right in the petitioner for grant of land.

8. The contention of the petitioner that laying the foundation stone by the Chief Minister in a function held by the petitioner, amounted to delivery of possession has absolutely no merit or legal basis.

9. Even otherwise the question of giving any relief to the petitioner does not arise, as the respondents have contended that the land has already been granted under the Ashraya Scheme to several siteless persons, There is no merit in this petition and accordingly it is dismissed.



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Sd/-
JUDGE